IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 132 OF 2005

1. Mrs. Ida Barreto
2. Mr. Arthur Barreto &
3. Miss Sylvia Barreto,
   All R/o H. No. 7,
   Opp. Railway Station,
   Seraulim, Salcete-Goa. .... Appellants

Versus

1. Mr. Pascoal Gonsalves
   and his wife;
2. Mrs. Alexandrina Gonsalves,
   Both R/o B-13,
   Ketan Co-op. Housing Ltd.,
   Wadala, Mumbai – 400 031. .... Respondents

Appellant No. 2 in person – absent.
Mr. C.A. Coutinho, Advocate for Respondent No.1.

CORAM : **P.V. KAKADE, J.**

DATE : **5th DECEMBER, 2006**

ORAL ORDER :

The appellant no. 2 appears for other appellants and for himself in person. On last occasion he was present in the Court and hence filed his written arguments, which is part of the records. Heard Advocate for the respondent no.1.

2. The plaintiffs/respondents filed the suit for declaration, cancellation of deeds and permanent injunction. Property involved is Survey No. 4/3 having land registration no. 14600 which originally belonged to one Andre Antonio Barretto and his wife Maria Jasmina Sancia Martins. After the death of said Maria Jasmina Sancia Martins, inventory was filed. The suit property was alloted to the widower Shri Antonio Andre and his children in the following shares namely; 1/2 to Andre Antonio, 1/8th to Maria Indinha, 1/8th to Maria Pia Alacoque, 1/8th to Maria Lilia and 1/8th to Theodore. Andre expired on 29/4/1935 without leaving any Will of his estate and, therefore, his estate devolved on his four children. Maria Indinha expired on 14/11/1980 without issues and Will. Her husband Amancio Godinho had predeceased her. She was his heir and moiety holder. Maria Pia Alacoque was a spinster and expired on 10/6/1986 leaving a open Will dated 21/5/1984 bequeathing all her assets in favour of the first plaintiff. As Maria Indinha died without Will and as Andre Antonio's share devolved on his children, the share would be equally divided into 1/12th share, each to Maria Pia Alacoque, Maria Lilia and Theodore. Sister of the first plaintiff, Mrs. Maria Suzana Joana Jasmina Boavida Linda Gonsalves or Linda Gonsalves alongwith her children had relinguished their share in favour of plaintiffs and, therefore it was alleged

that first plaintiff had 2/3rd share in the suit property; 1/8th of Maria Lilia, 1/8th + 1/12th of Maria Pia Alacoque, 1/8th of Andre Antonio and 1/12th of Maria Indinha and, hence, when the dispute occurred, the suit came to be filed. The defendants challenged the allegations of the plaintiffs contending that the property was given in dowry to Maria Lilia and, therefore, the plaintiffs had no right title interest in the property and sought dismissal of the suit.

3. Trial Court after hearing both the parties came to the conclusion that the plaintiffs failed to prove that they and defendants were owners in possession of the suit property and also failed to prove that plaintiffs had 2/3rd share in the suit property. It was also held that plaintiffs failed to prove that defendants had sold the property without their consent and as such the suit came to be dismissed. Appeal was preferred to the District Court. The learned lower appellate Court Judge after hearing both the parties did not concur with the findings recorded by the trial Judge and came to the conclusion that the plaintiffs had proved that they were co-owners of the property bearing land registration no. 14600 with 2/3rd share and co-occupants of survey no.4/3 of Seraulim Village. It was further held that sale deed dated 4/12/1997 and the Deed of Rectification dated

3/2/2003 were void and liable to be cancelled. Lower appellate Court Judge was also of the view that the deed of assignment dated 13/11/1997 whereby the defendants got themselves as the exclusive heirs of late Theodore and Maria Pia Alacoque was void to the extent of 2/3rd share of the plaintiffs in the property bearing land registration no. 14600 and as such the suit came to be decreed and permanent injunction was granted as a consequential relief. Hence, the present appeal.

4. At the outset, it may be noted that on critical perusal of the judgment of the lower appellate Court vis-a-vis entire evidence on record, there is no doubt whatsoever that the lower appellate Court has rightly appreciated the entire evidence on record and has come to the conclusion that the plaintiffs are owners of property involved to the extent of 2/3rd share. The consequential reliefs are also seen to be granted legally and properly and, therefore, I do not see any reason why the lower appellate Court judgment should be interfered with and as such I find no merit in the appeal and, hence, the appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

NH